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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/604,152	06/27/2000	Charles Calvin Byers	BYERS-38	5266
44190	7590	01/07/2005	EXAMINER	
WALTER W. DUFT LAW OFFICES OF WALTER W. DUFT 8616 MAIN ST SUITE 2 WILLIAMSVILLE, NY 14221			SAM, PHIRIN	
		ART UNIT		PAPER NUMBER
		2661		
DATE MAILED: 01/07/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/604,152	BYERS, CHARLES CALVIN	
	Examiner	Art Unit	
	Phirin Sam	2661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 20 August 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-63 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 63 is/are allowed.

6) Claim(s) 1,13-22,31-33,35,44-53 and 62 is/are rejected.

7) Claim(s) 2-12,23-30,34,36-43 and 54-61 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 27 June 2000 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


Phirin Sam

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	PRIMARY EXAMINER	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)		5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date. _____.		6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1, 13, 14, 18-22, 31-33, 35, 44, 45, 49-52, and 62 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No. 6,097,722 (hereinafter called “Graham”).

Graham discloses the invention (**claim 32, 49, 52, and 62**) as claimed including a system for providing controlled broadband access bandwidth allocation adjustment service in a broadband network, comprising:

(a) a broadband bandwidth allocation service manager that is accessible via said broadband network (see Figs. 1a and 2, element 150, col. 6, lines 17-22);

(b) a broadband bandwidth allocation adjuster associated with said service manager, said allocation adjuster being responsive to a broadband bandwidth allocation adjustment request from a requestor (see Figs. 1a and 2, col. 7, lines 21-35).

Regarding claims 33, 35, and 44, Graham discloses a system further including a broadband bandwidth allocation pricer that is responsive to broadband bandwidth demand and availability factors, said pricer being linked to said allocation adjuster, and said allocation adjuster being responsive to acceptance of bandwidth allocation pricing set by said bandwidth allocation pricer by said requestor (see Fig. 2, col. 7, lines 25-35, 48-62).

Regarding claim 45, Graham discloses the allocation adjuster is adapted to adjust said requestor's fractional bandwidth occupancy relative to maximum available bandwidth (see Fig. 2, col. 7, lines 25-40).

Regarding claims 19 and 50, Graham discloses the requestor is an automated broadband allocation adjustment agent operating on a broadband network subscriber's data processing device, said agent being adapted to initiate a broadband bandwidth allocation adjustment request based on factors relating to said broadband network subscriber's use of said data processing device (see Figs. 2 and 8, col. 7, lines 48-62).

Regarding claims 20 and 51, Graham discloses the factors include a comparison of said subscriber's broadband bandwidth allocation needs versus said subscriber's current broadband bandwidth allocation, and consideration of broadband bandwidth allocation pricing (see Figs. 2 and 8, col. 7, lines 48-62).

Regarding claims 1, 18, 21, 22, and 31, Graham discloses a method for providing controlled broadband access bandwidth allocation adjustment service in a broadband network, comprising the steps of:

- (a) implementing a broadband bandwidth allocation service manager that is accessible via said broadband network (see Figs. 1a and 2, element 150, col. 6, lines 17-22);
- (b) receiving a broadband bandwidth allocation adjustment request at said bandwidth allocation service manager from a broadband allocation adjustment requestor (see Fig. 2, col. 7, lines 25-35);
- (c) adjusting a broadband bandwidth allocation on behalf of said requestor in accordance with said broadband bandwidth allocation adjustment request (see Fig. 2, col. 7, lines 36-45).

Regarding claims 13 and 14, Graham discloses the adjusting step includes adjusting one or more of said requestor's broadband bandwidth allocation, broadband service class, broadband connection traffic descriptors, and broadband quality of service parameters (see Figs. 1a and 2, col. 7, lines 29-35).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 15-17 and 46-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,097,722 (hereinafter called "Graham") in view of US Patent No. 6,735,176 (hereinafter called "So").

Regarding claims 15-17 and 46-48, Graham does not disclose adjustment of said broadband service class includes adjusting said bandwidth service class to one of a Constant Bit Rate service, real-time Variable Bit Rate service, non-real-time Variable Bit Rate service, Available Bit Rate service, and Unspecified Bit Rate service. However, So discloses adjustment of said broadband service class includes adjusting said bandwidth service class to one of a Constant Bit Rate service, real-time Variable Bit Rate service, non-real-time Variable Bit Rate service, Available Bit Rate service, and Unspecified Bit Rate service (see Figs. 3 and 4, col. 1, lines 19-32, 51-65, and col. 4, lines 35-47). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine adjustment of the broadband service teaching by So with Graham. The motivation for doing so would have been to provide to allow determination of a proper maintenance procedure to be performed in response to a resource change request of an active connection read on column 3, lines 2-4. Therefore, it would have been obvious to combine So and Graham to obtain the invention as specified in the claims 15-17 and 46-48.

5. Claim 53 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,097,722 (hereinafter called "Graham") in view of US Patent No. 6,578,077 (hereinafter called "Rakoshitz").

Regarding claim 53, Graham does not disclose the service manager is adapted to provide an indication to the requestor of broadband bandwidth allocation adjustment website. However, Rakoshitz discloses the service manager is adapted to provide an indication to the requestor of broadband bandwidth allocation adjustment website (see Figs. 9-15, col. 16, lines 36-63). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to

combine an indication to the requestor of broadband bandwidth allocation adjustment website teaching by Rakoshitz with Graham. The motivation for doing so would have been to provide to display the information being bandwidth profiled read on column 2, line 66, and column 3, lines 3-15. Therefore, it would have been obvious to combine Rakoshitz and Graham to obtain the invention as specified in the claim 53.

Allowable Subject Matter

6. Claims 2-12, 23-30, 34, 36-43, and 54-61 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claim 63 is allowed.

Response to Arguments

8. Applicant's arguments with respect to claims 1, 13-19, 21, 22, 31, and 32 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- (1) Reininger et al (U.S. Patent 6,404,738) discloses dynamic network bandwidth allocation for multimedia applications with soft QoS requirements.
- (2) Abe et al (U.S. Patent 6,108,304) discloses packet switching network, packet switching equipment and network management equipment.

(3) Marshall et al (U.S. Patent 5,673,393) discloses management bandwidth over a computer network having a management computer that allocates bandwidth to client computers upon request.

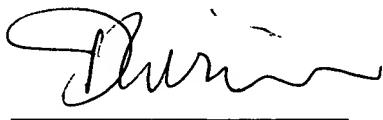
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phirin Sam whose telephone number is (571) 272-3082. The examiner can normally be reached on Mon-Fri, 8:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth N Vanderpuye can be reached on (571) 272 - 3078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Respectfully submitted,

Date: January 4, 2005



PHIRIN SAM
PRIMARY EXAMINER